Message

From: Schock, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8AECC78BFE4A4B1AAEA5DB7146ABB41F-SCHOCK, MICHAEL]
Sent: 9/11/2018 11:34:51 AM
To: Rotert, Kenneth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac56f5227ddb45b8b6f8925ead0c076b-Rotert, Kenneth]; Owen, Elise [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d7587ab97a1d45e49f8ee2e206d442d0-Owen, Elise]; Ohanian, Edward [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f119491e2ba8476381a39c57a456ac55-EOhanian]; Rodgers-Jenkins, Crystal [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5621428d46854b01a50ddde7a1004f3a-Rodgers-Jenkins, Crystal]; Albert, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c0c5a0954b714e9587f853cb809599b1-RAlbert]
CC: Scheckel, Kirk [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5377b49f9707432eab7b613986054a78-Scheckel, Kirk]; Murray, Regan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4b06d968152a4cefb83c9864ff5c89c6-Murray, Regan]; Parshionikar, Sandhya [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=76bf82eb615b4431a221461570392f98-SPARSHIO]; Speth, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1772a8d7f6554ec79861c6225bd2507d-Speth, Thomas]
Subject: RE: Draft NSF 444 update for EPA staff - comments by 9/12 @ noon - thanks!

I have been under the impression since the beginning of the NSF 444 process that "chemical" contamination includes corrosion of interior piping, including lead, copper, iron corrosion, cadmium, etc. AND it considers inorganic reactions that might take place within building plumbing, such as nitrification or manganese/iron depos, and organic processes such as DBP formation. In fact, an issue requiring extensive scrutiny is how to sample building systems in a meaningful way, because of the difficulty in characterizing impacts of chemicals added and intrinsic water quality, plumbing configuration and usage pattern interactions.

If it doesn't include the corrosion and metal leaching aspects, I would not have been requested to be part of the committee. Unfortunately, due to other time commitments, I have not been very timely in rewriting sections of the standard to adequately take these issues into account, beyond the placeholders that are in there now.

--Mike

From: Rotert, Kenneth
Sent: Monday, September 10, 2018 4:51 PM
To: Owen, Elise <Owen.Elise@epa.gov>; Schock, Michael <Schock.Michael@epa.gov>; Ohanian, Edward <Ohanian.Edward@epa.gov>; Rodgers-Jenkins, Crystal <Rodgers-Jenkins.Crystal@epa.gov>; Albert, Ryan <Albert.Ryan@epa.gov>
Subject: RE: Draft NSF 444 update for EPA staff - comments by 9/12 @ noon - thanks!

Elise,
Just a few comments on your text below. I've copied you excerpts, with my comments on them in red.
Thanks
Ken
- In short, NSF entered into a consulting arrangement with Homeyer Consulting~~International~~, one of many consulting practices serving on the 444 committee. I had not heard of Homeyer consulting before the agreement letter earlier this year. There has been no one from Homeyer on the 444 Committee, and no one shows up on the roster even now. I've never even heard of them even being present at any of the meetings.

Deliberative Process / Ex. 5

- EPA staff (OW/OGWDW and ORD/NRMRL) have been participating in the Joint Committee for NSF Standard 444 since 2017. I joined in late 2015 and the first meeting of the Committee was in early 2016.

- The objective of this Joint Committee is to help manage *Legionella*, disinfection and metal contamination in building water systems. They have been stating all along that it is to manage chemical, microbial and physical risks. I don't recall metal contamination being mentioned specifically (recognizing it is a chemical), but we may want to avoid the term metal because people will think lead, which the Standard is not addressing.

- During the development of NSF Standard 444, NSF International entered into a business arrangement with one of the private sector consulting organizations that was participating on the joint committee, Homeyer Consulting. See the first bullet above.

From: Owen, Elise
Sent: Monday, September 10, 2018 3:15 PM
To: Schock, Michael <Schock.Michael@epa.gov>; Ohanian, Edward <Ohanian.Edward@epa.gov>; Rotert, Kenneth <Rotert.Kenneth@epa.gov>; Rodgers-Jenkins, Crystal <Rodgers-Jenkins.Crystal@epa.gov>; Albert, Ryan <Albert.Ryan@epa.gov>
Subject: Draft NSF 444 update for EPA staff - comments by 9/12 @ noon - thanks!
Importance: High

Hi team –

Good call today!

Below is an update for EPA staff engaged in NSF. I'll plan to send this Wednesday around noon. Would you please let me know if any suggestions before then?

Thanks!

Elise

Subject: NSF - FYI - recent activities in the NSF 444 committee

Dear colleagues:

I'm writing because you either participate in NSF International standards development activities, or use NSF certification/profiler services in your programs (please let me know if I've missed anyone on the latter).

For your situational awareness, we wanted you to be aware of some recent activities in the NSF 444 committee in which EPA (OW, ORD) participates. In short, NSF entered into a consulting arrangement with Homeyer International, one of many consulting practices serving on the 444 committee. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I am optimistic that we will arrive on a good path forward toward continued collaboration with NSF.

Below and attached is additional detailed information on the recent activities in NSF 444.

Thank you,

Elise

Elise Owen
EPA Standards Executive
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1. ***What's the issue?***

EPA staff (OW/OGWDW and ORD/NRMRL) have been participating in the Joint Committee for NSF Standard 444 since 2017. The objective of this Joint Committee is to help manage *Legionella*, disinfection and metal contamination in building water systems. NSF International is a private sector not-for-profit organization that develops standards related to water, sanitation, and sustainability (note that NSF International was previously the National Sanitation Foundation, but changed its name to NSF International to reflect its broader scope and international standing. It is not affiliated with the National Science Foundation (NSF)). The Joint Committee has included governmental representatives (including Center for Disease Control (CDC), Veterans Administration (VA) and EPA) as well as private sector consultants, academia, industry and other stakeholders.

During the development of NSF Standard 444, NSF International entered into a business arrangement with one of the private sector consulting organizations that was participating on the joint committee, Homeyer Consulting. This arrangement was announced via on in April 2018 via a press release. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 The NSF International letter is attached, and includes as attachments (1) the NSF International response to concerned Joint Committee members as well as (2) a letter from the American National

Standards Institute (ANSI) explaining that its accredited standards developers are permitted to engage in commercial activities such as consulting and certification.

2. *What's the USG legal and policy context?*

The National Technology Transfer and Advancement Act (NTTAA, PL 103-114) states that federal agencies and departments ***shall*** (with narrow exceptions) use Voluntary Consensus Standards (VCS), instead of creating government-unique standards, as a means to carry out policy objectives. The NTTAA also states that federal agencies and departments ***shall*** participate in the development of VCS whenever such participation is in the public interest and is compatible with agency or departmental missions, priorities, budgetary resources, and authorities. In addition, the NTTAA and related policies encourage agencies to coordinate their conformity assessment activities (e.g. testing, certification, inspection, etc.) with the private sector to avoid unnecessary duplication.

OMB Circular A-119 provides additional guidance to agencies on implementation of the NTTAA, and outlines the roles and responsibilities of Heads of Agencies as well as Agency Standards Executives (Elise Owen). OMB A-119 makes clear that agency participation in the development of a VCS does not connote agency endorsement or agreement with decisions by such bodies. OMB A-119 also outlines key attributes or elements of a Voluntary Consensus Standards (VCS) process, including openness, balance, due process, appeals process and consensus. These attributes focus on the quality of a VCS body's processes and procedures for standards development.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Neither OMB A-119 nor relevant private sector standards policies (see #4 below) address the broader behavior of the VCS body beyond standards development (including business activities outside of standards development) unless they impact the standards development process or procedures.

OGC/Ethics has reviewed EPA's participation in NSF International activities i Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

3. *What's the context of EPA's engagement with NSF?*

EPA has a long and fruitful history of collaboration with NSF International. Among other things, NSF codeveloped NSF/ANSI 61, which sets criteria for many water system components. Many States and utilities rely on NSF certification to ensure minimum standards on drinking water treatment equipment are met, and thus reduce drinking water contamination in situations not directly covered by the Safe Drinking Water Act regulations.

Today, staff from OW, OCSPP, OLEM, ORD, and R9 participate in various NSF International Joint Committees to develop standards (see roster of EPA staff participation in private sector standards attached, participation in NSF is on page 4). EPA staff have consistently reported that NSF International is one of the best organizations for standards development in the sustainability space because NSF provides staffing support and resources to help keep these activities on track, provides a perspective of certification implementation from its experience in that area, and is effective at engaging broad stakeholder groups to achieve balance. I Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

In addition to standards development, many EPA programs use NSF International certification services, including, Energy Star, Water Sense, and EPA's Environmentally Preferable Purchasing (EPP) program. In addition, NSF International serves as a third-party profiler for the Safer Choice program, preparing chemical dossiers on products for Safer Choice review and decision on certification. NSF International is not an exclusive service provider to any of these programs, but rather is one of many certification bodies that has meets EPA program criteria.

4. What's the private sector policy context?

The U.S. standardization system is private sector-led with government participation. The American National Standards Institute (ANSI, a 501(c)3 not-for-profit organization) coordinates this system. EPA (Elise Owen) is a member of ANSI's Board of Directors, along with representatives from other federal agencies (NIST, DOT, CPSC, DHS, DoD), companies and trade associations, standards developing organizations (SDOs, including NSF International), certification and testing bodies, consumer representatives, academics, etc.

- Standards Development: ANSI developed and maintains the "ANSI Essential Requirements," which is essentially a standard for developing standards. ANSI accredits VCS bodies like NSF International to develop American National Standards using procedures that meet the ANSI Essential Requirements. The approval process for American National Standards includes an opportunity for any stakeholder to file an appeal on the basis of procedural issues. The criteria in the ANSI Essential Requirements address the attributes of a VCS process as outlined by OMB A-119, with the exception of balance. OMB A-119 states that "standards development process should be balanced. Specifically, there should be meaningful involvement from a broad range of parties, with no single interest dominating the decision-making." The ANSI Essential Requirements, on the other hand, call standards developing organizations to demonstrate that they have taken steps to try to achieve balance, but do not specifically require that balance actually be achieved.

  Like OMB A-119, the ANSI Essential Requirements focus on VCS bodies' process and procedures for standards development, and do not address broader activities or business activities except where they would impact the standards development process.

  ANSI's Executive Standards Council and its related committees maintain ANSI Essential Requirements, make decisions about accreditation of SDOs and approval of American National Standards, and hear appeals. EPA/Elise Owen sits on these committees along with representatives from other federal agencies (CPSC, NIST, DHS, DoD), VCS bodies (including NSF International) companies and consumer advocates.

- Certification: NSF International certification programs have been accredited by ANSI following relevant international standards. Many VCS bodies develop standards and offer certification services, but international standards and ANSI's accreditation process requires that firewalls be in place between the two functions to ensure the independence of certification functions. ASNI's accreditation requirements do not permit organizations to offer certification and training/consulting services on the same topics because this would impact independence of certification decisions. However, certifications bodies are permitted to offer training, consulting and other services on topics for which they are not providing certification services. NSF International is not offering certification to Standard 444, and instead is offering consulting services.

- Consulting: unlike standards development and certification, ANSI does not offer independent oversight of organizations offering consulting, training or other professional services affiliated with VCS.

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